

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. VIRGILIO OPLADO AND VISITACION FERNANDEZ GUYOT, DEFENDANTS AND APPELLEES.

G.R. No. 20146. September 30, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In a complaint filed on November 26, 1958, before the Municipal Court of Cebu City, Virgilio Oplado and Visitacion Fernandez Guyot were charged by the latter's husband with the crime of adultery allegedly committed during the month of June, 1958 and for some time subsequent thereto.

Thereafter, the same complaint was reproduced in an amended information filed by an Assistant Fiscal of Cebu City before the Court of First Instance of Cebu. In view of the failure of the prosecution to arrest Visitacion Fernandez Guyot, the trial of the case had to be repeatedly postponed, although the prosecution had always been ready to proceed with the trial with respect to the co-accused Virgilio Oplado. Finally, when the case was again called for trial on March 5, 1962, and still Visitacion Fernandez Guyot was at large for as yet she had not been apprehended, the Court a quo, upon motion of co-accused Virgilio Oplado, over the objection of the prosecution, ordered the provisional dismissal of the case. Hence, the City Fiscal took the instant appeal claiming that the provisional dismissal of the case was contrary to law considering that the prosecution was ready, able and willing to proceed with the trial with respect to accused Virgilio Oplado. The only issue before us is whether the Court a quo erred in ordering the provisional dismissal of the case due to the failure of the prosecution to arrest the accused Visitacion Fernandez Guyot considering that both the prosecution and the accused Virgilio Oplado were then ready for trial even in the absence of his co-accused. Stated in another way, the question presented is whether one of the accused in a prosecution for adultery may be separately tried in the absence of the other accused where both the prosecution and the other accused are ready to go to trial.

It is now well settled in this jurisdiction that while the husband cannot institute a prosecution for the crime of adultery without including therein both of the guilty parties if they are both living, the statute does not require that both must necessarily be tried together. When the complaint is filed by the offended husband against both of the guilty parties, the proceedings then pass into the hands of the prosecuting officer, who may move for dismissal of the complaint as to the paramour if he is certain that he cannot establish guilty knowledge on the part of the man of the fact that the woman was married, and such dismissal would not of itself require the Court to acquit the woman. Nor would the death of the woman during the pendency of the action defeat the trial and conviction of the man. (U.S. vs. De la Torre and Gregorio, 25 Phil. 36) Neither would the fact that the man had left the country and could not be apprehended defeat the trial and conviction of the woman. And if both are brought before the court to be tried jointly and one of them claims a separate trial, which the Court would have to grant (Sec. 33, General Order No. 58), the acquittal of one would not necessarily bar the prosecution and conviction of the other (U.S. vs. Topiño and Guzman, 35 Phil. 901, 910).

And in a later case, it was stated that "there are numerous cases, after the complaint has been properly presented, where one or the other of the alleged guilty parties in a criminal action for adultery may be tried and sentenced separate from the codefendant. For example, where one of the parties died after the commencement of the action, or where the man was ignorant of the fact that the woman was a married woman at the time of the commission of the alleged criminal act." (U.S. vs. Gallegos, 37 Phil. 289, 292) And so, the Supreme Court declared that the lower Court in that case did not commit an error in requiring the paramour to proceed to trial alone in the absence of his codefendant.

It is then clear that a defendant in an adultery case may be tried alone or separately from his codefendant if the prosecution and the party available are ready for it. The only difference between the old rule (Section 33, General Order No. 58, as amended) and the present (Section 8, Rule 115, Rules of Court) is that under the old law, a separate trial can be demanded by a codefendant as of right and the Court had no authority to deny the petition. (U.S. vs. Remigio, 36 Phil. 719), while under the present rule it is discretionary upon the trial Court to order a separate trial.

In the instant case, the order of the trial Court appealed from discloses that the adultery case has been pending for more than three years, that is, since November 26, 1958, when the case was filed, to March 5, 1962, when the case was called for trial, in view of the failure of the prosecution to apprehend Visitacion Fernandez Guyot, and that at the hearing of March 5, 1962, the other accused, Virgilio Oplado, manifested his readiness to enter to trial. Nonetheless, the trial Court granted the motion of the accused Oplado for the provisional dismissal of the case on the ground that he is entitled to a speedy trial, even if the prosecution was likewise able and ready to try the case.

This is not only an error but an abuse of discretion, for the very right of accused Oplado to a speedy trial demanded that the case against him be heard and prosecuted to a conclusion without waiting for the arrest of his co-accused, there being no advantage to be derived from the provisional dismissal of the case when trial could be held then and there without further delay and in the interest of said co-accused.

We have, therefore, no other alternative than to set aside the order of dismissal and remand this case for further proceedings.

WHEREFORE, the order appealed from is hereby set aside. This case is ordered remanded to the lower Court for further proceedings. No costs.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

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